Supreme Court, U. S.
FILED
APR 24 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1421

LAHMAN MANUFACTURING COMPANY, INC., and ROBERT ANDERSON, d/b/a PLATTE IMPLEMENT,

Petitioners,

vs.

FARMHAND, INC.

Respondent.

REPLY BRIEF TO PETITION FOR WRIT OF CERTIORARI

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1978—Northwest Brief Printing Co., 316 Chicago Avenue, Minneapolis 55415—338-5078

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1. FARMHAND'S SUPPLEMENTAL STATEMENT OF THE CASE

In Farmhand's Brief In Opposition to Lahman's Petition, Farmhand makes use of language such as "chain-type haystack mover," "haystack moving device," "automatic loading of a haystack," or language to that effect some 30 times in an apparent attempt to distinguish the so-called art of moving haystacks over that of moving straw stacks. Any distinguishing features are without merit in considering the relevancy of the admittedly old elements which are identical, used for the same identical purpose, and used in the same identical manner when it comes to

loading, transporting, and unloading either a stack of straw or hay. Farmhand takes this position against the background of the diverse prior art cited in the file histories of the Schiltz Patent which was directed to truck-mounted lumber loaders and unloaders, devices for picking up cut forage material such as hay, grain, hemp and the like from the ground, power-driven conveyors mounted on vehicles for unloading cargo vehicles and a trailer-type mechanism adapted to transport and unload materials such as baled hay.

Farmhand chose the language of the Trial Court in comparing the ease of operation of the chain-type mover to the operation of the cable-type mover. (RB-2, 3)* However, the operator of the Bruce chain-type mover, having once set the transmission for the proper speed, is not required to leave his conveyance, is not burdened with a sling, nor cables which may sliver or snap under tension.

2. THE SCHILTZ MACHINE IS A COMBINATION OF OLD ELEMENTS PRODUCING NO SYNERGISTIC RESULT

Farmhand, in its Brief In Opposition To Petition For Writ Of Certiorari, attempts to persuade the Court that—

> "*Unlike Ag Pro, all of the individual elements of the Schiltz Combination were not old and well known in the haystack moving business. In the Schiltz invention, the individual parts function together to provide a result never before accomplished; namely the automatic loading of a haystack. In accomplishing*

*The designation RB refers to Respondent's Brief, the designation App. refers to the Appendix submitted with the Petition, and P. refers to the Petition.

> *this result, the parts function in a manner unlike their usual manner.*" (RB-8)

Farmhand makes such a statement by completely ignoring Bruce as prior art. Bruce shows these old elements functioning in the same manner that Farmhand claims was done for the first time in Schiltz. Regardless of how the individual parts function in the Schiltz mechanism they functioned in the same manner in the Bruce mechanism which automatically loaded a stack of straw in 1925.

The argument advanced by Farmhand in support of its position, and how that argument is affected by the Bruce prior art reference should be carefully considered:

I. "*Chains have never previously (i.e. prior to the invention) been known to be used for loading a haystack, which is a large, flexible mass.*" (RB-8)

> BRUCE (App. E)—It will be seen that a means is thus provided for positively driving the chains 30 in either direction and that when the platform is being pushed, the chains will be operated to draw material onto the platform while, when the platform is being pulled, the chains will be operated to discharge material from the platform. (p. 2, lns. 62-70)

Thus, Bruce disclosed the use of chains for loading a large pile of straw or (a large, heavy, flexible mass) as early as 1925, and the relationship of the chains carrying the load was the same as that advocated by Schiltz.

II. "*Chains, prior to the invention, were not known to be used to provide a path for the longitudinally extending beams to easily move under the haystack between the chains and the ground.*" (RB-8)

> Bruce (App. E)—Each tooth has its upper portion in the form of a housing, the forward end of which provides a shoe 23 for engagement with the ground. In the rear portion of this shoe, on each tooth is mounted a stub axle 24 upon which is mounted a roller 25, the upper edge of which projects through a slot 26 formed in the upper wall 27 of the tooth. Adjacent their rear ends, a shaft 28 transversely of the platform is directed through all of the teeth and in the housing of each tooth has secured thereto a sprocket wheel 28*, the upper surface of which projects through a slot 29 formed in the upper wall of the housing. About each roller 25 and sprocket 29, a toothed sprocket chain 30 is passed. (p. 2, lns. 11-27)

Hence, it was Bruce, not Schiltz, who was the first to provide chains to form a path for longitudinally extending beams to move between the chains and the ground.

III. *"The chains, in the Schiltz invention, as they come around the ends of the beams, serve a pickup function which aid in both picking up the haystack and also in providing the path for the beams to work under the haystack between the chains and the ground."** (RB-8)

> BRUCE (App. E)—As the forward movement of the platform continues, the gear 16 meshing with the gear 51 drives the chains 30 so that their upper runs travel toward the head rails 10 and anything resting upon the upper surface of the fingers will be moved toward the rear end of the fingers. (p. 2, lns. 129-130, p. 3, lns. 1-5)

*The relationship of the chains as they proceed around the ends of the beams is neither a part of claim 10 nor a part of the specification of the Schiltz patent.

Similarly, like Ag Pro, A & P, and Anderson's-Black Rock, the Schiltz combination is drawn to a combination of old independently functional elements used on a straw-stack mover.

IV. *"There is a cooperative and new relationship between the chains, the longitudinally extending support beams, and the speed relationship, previously not known and not disclosed in the prior art."* (RB-8)

> BRUCE (App. E)—The shaft 29 is connected by sprocket gearing 31 with the output shaft of the transmission 33. (p. 2, lns. 27-40) * * * It will be seen that a means is thus provided for positively driving the chains 30 in either direction and that when the platform is being pushed, the chains will be operated to draw material onto the platform. * * *. (p. 2, lns. 63-70) As the forward movement of the platform continues, the gear 16 meshing with the gear 51 drives the chains 30 so that their upper runs travel toward the head rails 10 and anything resting upon the upper surface of the fingers will be moved toward the rear end of the fingers. (p. 2, lns. 129-130, p. 3, lns. 1-5)

Bruce discloses the chains operating on longitudinally extending support beams with a transmission to drive the chains at a proper speed relationship for which Farmhand's Expert Witness, Mr. Strait, admitted it would be no big problem to change. (App. D, 758-759)

The Bruce transmission 33 is shown as a five speed transmission and thus in principle, mechanism, and function, is operable in the same manner as the auxiliary transmission 10 of the patent in suit and fully responds to the mechanism for producing movement of the chain on the beams at varying rates.

Under these conditions, each of the elements in Schiltz acts in the same manner as Bruce.

V. "*In the Schiltz invention, the chains function as a primary support of the haystack.*" (RB-9)

Observation of Figures 1 and 2 of the Bruce device (App. E) show that indeed the chains also function as a primary support for the straw stack—

> As the forward movement of the platform continues, * * * chains 30 [are driven] so that their upper runs travel toward the head rails and anything resting upon the upper surface of the fingers will be moved toward the rear of the fingers. (p. 2, lns. 129-130, p. 3, lns. 1-5)

What could be more simple and straight forward than having a stack of straw or hay, a chain, and a support beam where the stack is supported by the chain and the support beam supports the chain. That is the arrangement disclosed in the Bruce structure, some 38 years before Schiltz suggested it was new in his structure.

VI. "*Thus, in the prior art there was a sliding frictional relationship between the bottom of the haystack and the support beams. Now, in the invention, there is a new cooperative relationship wherein it is the chains which are primary support of the haystack and these chains remain relatively fixed with respect to the haystack,* as the chains are fed or laid out beneath the haystack between the bottom of the haystack and the beams.*" (RB-9) [Emphasis added]

*Farmhand again makes reference to details not claimed nor disclosed in the Schiltz patent. However, the same arrangement of elements in Bruce, produces the same result.

The same relationship attributed to Schiltz is maintained in the Bruce structure, and as such, the prior art discloses the same rolling relationship of the chains with respect to the support beams as claimed by Schiltz, and not the sliding frictional relationship suggested by Farmhand.

VII. "*A further new and cooperative relationship is the relative speed between the chains moving forward and the haystack mover moving rearwardly.* (RB-9)

As stated previously, such a relationship was not new to Bruce.* (App. E)

> As the forward movement of the platform continues, * * * the chains 30 [are driven] so that their upper runs travel toward the head rails * * *. (p. 2, lns. 129-130. p. 3, lns. 1-2)

VIII. *When this speed relationship is generally equal, the chains remain relatively fixed with respect to the bottom of the haystack as the mover moves rearwardly underneath the haystack.*" (RB-9)

This so-called speed relationship was within the control of the operator of the Bruce structure through the use of the transmission 33 having capabilities of selecting one of five speeds. The very fact that it was disclosed in Bruce also clearly shows its intended purpose, otherwise a simple clutch would have sufficed. In other words, the operator can accomplish the speed relationship. (P. 9)

It is obvious that the speed relationship which Schiltz claims as new, is also old.

Similar language appears in Claim 8, where it states " * * and means for driving the load shifting means [the chains] in a direction opposite to the direction of movement of the platform * * *".

Farmhand has attempted to breathe some form of synergism into the Schiltz patent through its numerous assertions (RB-10) and concludes with statements of: "chains alone cannot load a haystack," * * * "longitudinally extending support beams alone cannot load a haystack * * *," "the parts cooperate to function in a manner unlike the manner they previously functioned to perform a new result * * *" but Farmhand refuses to recognize such statements as directly applicable to what Bruce did some 38 years earlier.

Respectfully submitted,

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